

June 9, 2020

Catherine A. Libertz, Director
Water Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RE: Combined Sewer Overflow (CSO) Strategy

Dear Ms. Libertz:

For a number of years, the Environmental Protection Agency (EPA) and the Department of Environmental Protection (DEP) have been working to resolve EPA's concerns with DEP's implementation of the NPDES program as it relates to combined sewer overflows (CSOs). In summary, DEP's regulation governing compliance schedules in NPDES permits (25 Pa. Code § 92a.51(a)) prohibits a schedule in a permit to meet water quality standards (WQS) and effluent limitations or standards that exceeds five (5) years, unless a court of competent jurisdiction issues an order allowing a longer time for compliance. Long-Term Control Plans (LTCPs) developed by CSO dischargers must be developed to achieve WQS but are, as the name implies, long-term plans, and generally take more than one 5-year NPDES permit term to implement.

DEP and EPA have worked cooperatively over several years to find a resolution to EPA's concerns. The purpose of this letter is to memorialize the decisions made and actions taken since your August 14, 2019 letter, and identify the future actions DEP will take to ensure its CSO strategy will be implemented in a way that achieves our mutual objectives.

In an email transmitted by EPA on October 3, 2019, EPA requested a series of actions to be taken by DEP in order to satisfy federal requirements and resume issuing NPDES permits for CSO dischargers. Each of these requested actions is presented below, followed by a discussion of decisions made and actions that will be or have been taken, as applicable.

- **Provide a signed copy of the memo that initiates DEP's regulatory revision process for 25 Pa. Code § 92a.51(a) (Schedules of compliance).**

Secretary McDonnell signed the memo to initiate the Chapter 92a rulemaking to change 25 Pa. Code § 92a.51(a) on April 15, 2020. A copy of the signed memo is attached.

- **Provide a schedule and timeline with milestones that DEP expects to expeditiously complete the regulatory revision. The schedule should include the target date for completion.**

DEP intends to take a proposed Chapter 92a rulemaking to the Environmental Quality Board (EQB) for consideration during the fourth quarter of 2020. Once adopted by the EQB, the proposed rulemaking can move forward in the regulatory review process, resulting in publication. Upon publication in the *Pennsylvania Bulletin*, a formal public comment period

will open. The February, March, and April 2020 EQB meetings were canceled due to the COVID-19 public health emergency, resulting in the possibility that this date may be pushed back due to other priorities that have been placed temporarily on hold. If the draft Chapter 92a rulemaking is adopted by the EQB, publication in the *Pennsylvania Bulletin* would likely occur in early 2021. In general, the process of finalizing a regulation in Pennsylvania takes approximately two years. DEP will move the final rulemaking forward for EQB consideration in the latter half of 2021. EQB adoption in late 2021 allows for publication of the rule as final and effective the second quarter of 2022.

- **Provide the Commonwealth's written commitment that it intends to upgrade the E. Coli standard in the next triennial review (Spring 2023) and begin to have permittees include the year-round standard as part of the CSO strategy and long term control planning activities**

DEP provided documentation to EPA on January 2, 2020 that its existing year-round fecal coliform bacteria standards were adopted after July 1, 1977. EPA's interpretation of Section 301(b)(1)(C) of the Clean Water Act is that permits may not contain compliance schedules for effluent limitations based on WQS adopted before July 1, 1977. Since DEP's year-round fecal coliform standards were adopted by the Environmental Quality Board on September 8, 1979, and became effective on October 8, 1979, post-1977, compliance schedules can be established in permits to achieve fecal coliform standards. EPA responded to DEP's January 2, 2020 email with an email on February 4, 2020, concurring with DEP's interpretation. As a result, a commitment from DEP to adopt an E. Coli standard for the non-swimming season is unnecessary for the 2020 triennial review. However, DEP commits to considering adoption of a non-swimming season E. Coli standard when EPA has developed such a standard, and DEP will transmit the regulatory changes to 25 Pa. Code § 92a.51(a) with its next (2023) triennial review package to EPA for approval as part of Pennsylvania's WQS. Please note as part of the 2017 triennial review DEP committed to considering adoption of a water quality standard for E. Coli for the swimming season only in the 2020 triennial review. DEP is moving forward with finalizing the water quality standard for E. Coli in 2020 for the swimming season only.

- **Provide EPA with a schedule of planned activities so that EPA can support the review and resolution of backlogged permits.**

By June 1, 2020, DEP will submit a preliminary draft NPDES permit to EPA for a small CSO discharger that includes the latest, agreed-upon CSO permit language. Thirty (30) days following EPA's review of the preliminary draft permit, DEP would submit the formal draft to EPA and publish the draft permit in the *Pennsylvania Bulletin*. Thereafter, DEP would submit draft CSO permits to EPA at a rate of approximately one per week until the backlog of approximately 70 permits has been reissued. Note that there are a handful of DEP's NPDES permits that have deficiencies beyond CSO concerns that may require additional time to issue.

EPA's February 4, 2020 email also requested an explanation of how DEP will require wastewater permittees to monitor for both fecal coliform and E. Coli as the proposed water quality standard for E. Coli would be applied seasonally and fecal would be year-round. When

the E. Coli standard becomes effective, DEP intends to incorporate E. Coli monitoring in NPDES permits as permits are reissued. The monitoring frequency will generally be monthly for major dischargers and will occur year-round to assess the correlation between fecal coliform and E. Coli concentrations in effluents throughout the year. In addition, DEP will ensure that year-round E. Coli monitoring is a component of the approved plans when CSOs propose the demonstration approach as part of its LTCP or propose a post-construction monitoring plan following completion of a LTCP to verify compliance with WQS.

DEP greatly appreciates the support EPA has provided on this topic and we look forward to receiving concurrence on these action items. If you have any questions regarding our plans, please contact me or have your staff contact Jay Patel, P.E., Acting Director for the Bureau of Clean Water, at (717) 783-2283 or jaypatel@pa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Aneca Y. Atkinson".

Aneca Y. Atkinson, MSWREE
Deputy Secretary